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**FILED**

AUG 01 2005

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Defendant/Cross-Defendant  
 UNION PACIFIC RAILROAD COMPANY

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

IRVING KESLER,

Plaintiff,

vs.

CONTINENTAL CASUALTY COMPANY,  
*et al.*,

Defendants.

Case No. C 05-391 MJJ

**STIPULATION AND  
 [REDACTED] ORDER FOR  
 STAY OF DISCOVERY AND  
 CONTINUATION OF  
 PRETRIAL DEADLINES**

CONTINENTAL CASUALTY COMPANY,

Cross-Claimant,

vs.

UNION PACIFIC RAILROAD COMPANY,  
*et al.*,

Cross-Defendants.

This Stipulation is made and entered into by the parties in this action, with  
 reference to the following:

WHEREAS, Plaintiff Irving Kesler filed Plaintiff filed his Complaint on  
 December 27, 2004, in the California Superior Court for the County of Sonoma (Case  
 No. SCV 236018);

1 WHEREAS, this action was removed to this Court on January 26, 2005, pursuant  
2 to the Notice of Removal filed by Continental Casualty Company ("Continental") and  
3 Union Pacific Railroad Company's ("UPRC") Joinder in Notice of Removal of Action;

4 WHEREAS, on February 7, 2005, the Court executed the Related Case Order,  
5 ruling that this action is related to the action entitled *Union Pacific Railroad Co. v. West*  
6 *Coast Welders Supply Co., Inc., et al.* (N.D. Cal. Case No. 04-2835 MJJ) (the "West  
7 Coast Action");

8 WHEREAS, at the May 3, 2005, Case Management Conference, the Court  
9 approved Plaintiff's proposal to conduct phased discovery, with the first phase limited to  
10 discovery regarding the existence and terms of the insurance policies at issue ("Phase I");

11 WHEREAS, the Court's Amended Pretrial Order, dated May 23, 2005, establishes  
12 a discovery cut-off of August 26, 2005, for Phase I discovery and a Phase I dispositive  
13 motion hearing cut-off date of October 18, 2005;

14 WHEREAS, the parties have served initial disclosures in this action, responded to  
15 written discovery demands propounded to date, and produced responsive documents;

16 WHEREAS, certain parties have or intend to meet and confer regarding the  
17 discovery responses served and documents produced;

18 WHEREAS, the parties have noticed certain depositions and discussed scheduling  
19 depositions beginning in August 2005, but no depositions have been conducted;

20 WHEREAS, the parties agreed to refrain from conducting further formal  
21 discovery in order to facilitate mediation sessions scheduled for June and July 2005;

22 WHEREAS, the parties attended mediation of this and the West Coast Action on  
23 June 21, 2005 and July 14, 2005 before the Hon. William L. Bettinelli (Ret.) of JAMS,  
24 and the parties and the mediator agreed that substantial progress was made towards  
25 resolution of this matter at those mediation sessions;

26 WHEREAS, at the July 14, 2005 mediation, Judge Bettinelli recommended and the  
27 parties agreed to proceed with a further mediation of this and the West Coast Action, and  
28 to pursue other settlement discussions;

1 WHEREAS, the parties remain interested in attempting to resolve this matter early  
2 in the litigation, *inter alia*, to minimize litigation costs and conserve judicial resources;

3 WHEREAS, the earliest possible date for the further mediation is September 6,  
4 2005, due to the unavailability of the mediator and of as counsel and insurance carriers  
5 for the parties;

6 WHEREAS, the parties have agreed not to serve additional discovery demands,  
7 conduct depositions or file discovery motions before the further mediation scheduled for  
8 September 6, 2005;

9 WHEREAS, the parties believe that the September 6, 2005 mediation, additional  
10 mediation sessions and other settlement discussions (collectively, the "Mediation") will  
11 be facilitated by an order of this Court (1) staying discovery until after the September 6,  
12 2005 mediation and (2) continuing the deadlines and hearing dates set forth in the  
13 Amended Pretrial Order; and

14 WHEREAS, the parties believe that good cause exists to stay discovery and  
15 modify the Amended Pretrial Order so the parties can continue settlement discussions,  
16 prepare for Mediation, minimize litigation costs, and conserve judicial resources;

17 NOW, THEREFORE, IT IS HEREBY STIPULATED by the parties through their  
18 counsel of record that the parties request an Order as follows:

- 19 1. Discovery in this action is stayed until September 15, 2005, in so far as  
20 (1) no discovery requests or deposition notices may be served on any  
21 parties to this action, (2) no depositions may be conducted, and (3) no  
22 discovery motions may be served or filed by any parties to this action;
- 23 2. The deadline to add new parties and/or file amendments to pleadings shall  
24 be continued to October 14, 2005;
- 25 3. The cut-off date for Phase I non-expert discovery shall be continued  
26 to November 30, 2005;
- 27 4. All Phase I dispositive motions shall be heard on or before January  
28 17, 2006; and

5. The Further Status Conference scheduled for November 15, 2005  
at 2:00 p.m. shall be continued until February 14, 2006 at 2:00 p.m.

DATED: July 27, 2005

LAW OFFICES OF HANS W. HERB

By: Hans W. Herb by [Signature]  
Hans W. Herb  
Attorneys for Plaintiff Irving K. Kesler

DATED: July 27, 2005

CARROLL, BURDICK & McDONOUGH LLP

By: G. David Godwin by [Signature]  
G. David Godwin  
Attorneys for Defendant Continental Casualty Co.

DATED: July 27, 2005

GREENBERG GLUSKER FIELDS CLAMAN  
MACHTINGER & KINSELLA LLP

By: [Signature]  
Shiraz D. Tangri  
Attorneys for Defendant/Cross-Defendant  
Union Pacific Railroad Company

DATED: July 27, 2005

LEVY, RAM & OLSON, L.L.P.

By: Heather M. Mills by [Signature]  
Heather M. Mills  
Attorneys for Third-Party Defendants  
West Coast Welders Supply Co., Inc.;  
West Coast Scrap Producers, Inc.; and Richard L.  
Bradley, for himself and as Trustee of the Richard  
L. Bradley Trust

DATED: July 27, 2005

BEYERS, COSTIN & CASE

By: Cameron Scott Kirk by [Signature]  
Cameron Scott Kirk  
Attorneys for Third-Party Defendants  
West Coast Metals, Inc.; Jack. L. Gardner; and  
William Whitman

GREENBERG GLUSKER FIELDS CLAMAN MACHTINGER & KINSELLA LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

**ORDER**

Pursuant to the foregoing Stipulation, IT IS HEREBY ORDERED that:

1. Discovery in this action is stayed until September 15, 2005, in so far as  
(1) no discovery requests or deposition notices may be served on any  
parties to this action, (2) no depositions may be conducted, and (3) no  
discovery motions may be served or filed by any parties to this action;
2. The deadline to add new parties and/or file amendments to pleadings shall  
be continued to October 14, 2005;
3. The cut-off date for Phase I non-expert discovery shall be continued  
to November 30, 2005;
4. All Phase I dispositive motions shall be heard on or before January  
17, 2006; and
5. The Further Status Conference scheduled for November 15, 2005  
at 2:00 p.m. shall be continued until February 14, 2006 at 2:00 p.m.

DATED: 8/1, 2005

  
Hon. Martin J. Jenkins  
United States District Judge